



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 667

IN THE MATTER OF KENDELL LONGO

DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and Kendell Longo pursuant to Section 5 of the Commission's *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, §4(j).

On October 16, 2001, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Longo. The Commission has concluded its inquiry and, on May 30, 2002, found reasonable cause to believe that Longo violated G.L. c. 268A, §§19 and 23(b)(2).

The Commission and Longo now agree to the following findings of fact and conclusions of law:

-Findings of Fact-

1. Between 1996 and 1999, Longo was employed as the Town of Rowley Health Department secretary. As such, Longo was a municipal employee as that term is defined in G.L. c. 268A.

2. Longo's brother, Brett Longo ("Brett"), purchased the property at 31 Red Pine Way in Rowley in April 1997. Brett is the president, treasurer and clerk of the B.J. Longo Corporation. In June 1997, Brett and his engineer submitted a sanitary disposal system repair plan for 31 Red Pine Way to the Rowley Board of Health. According to the plan, Brett intended to build a duplex on the property and install a new septic system. The old septic system that serviced an existing carriage house was to be backfilled and collapsed, the leaching area that serviced the carriage house abandoned, and the carriage house razed. The existing well was to be tested and inspected. The then-health agent signed off on the plan on September 17, 1997, and the B.J. Longo Corporation was issued a disposal system construction permit by the Board of Health.

3. On December 30, 1998, Longo issued a certificate of compliance for 31 Red Pine Way by signing the inspector line on the certificate. A certificate of compliance certifies that a septic system has been installed in compliance with an approved plan

submitted to a municipality, and that the installation is in compliance with Title V regulations.

4. Before a municipality can issue a certificate of compliance, several steps must occur:

(a) An "as-built" plan is drafted by a septic system design engineer and submitted to the municipality to certify that the installation of the septic system is in compliance with the originally approved plan.

(b) a Board of Health inspector approved by the relevant municipality must conduct a site inspection and ensure that the work on the septic system is in accordance with the originally approved plan;

(c) the septic system installer and designer must sign the certificate, and then

(d) an inspector approved by the municipality must sign the certificate.

5. When Longo issued the certificate of compliance for 31 Red Pine Way on December 30, 1998, she knew that no site inspection had been conducted on the property. She also knew that there was no "as-built" plan on file and that the installer and designer had not signed the certificate. Finally, Longo knew that Brett owned the property and that it would be more marketable and therefore more valuable if it had a certificate of compliance.

6. On January 27, 1999, an engineer signed and submitted an "as-built" plan for 31 Red Pine Way, however, it did not match the September 1997 plan. Unlike the September 1997 plan, the January 27, 1999 "as-built" plan listed the dwelling to be constructed as a single-family home instead of a duplex and the double-tank system that would have accommodated a duplex had been changed to a one-tank system.

7. Because Brett owned 31 Red Pine Way and applied for the certificate of compliance, Brett had a financial interest in having the certificate issued, as the property was more saleable with a septic system certificate of compliance. A municipality cannot issue an occupancy permit for a dwelling if a certificate of compliance has not been issued.

8. On January 2, 1999, Longo also signed on behalf of the Board of Health an occupancy permit for 31 Red Pine Way. An occupancy permit is required in order for a structure to be considered habitable. An occupancy permit may not issue until, among other approvals required, a certificate of compliance for the septic system is obtained. Brett had a financial interest in having the occupancy permit issued because it, like the certificate of compliance, makes the property more marketable.

-Conclusions of Law-

Section 19

9. Section 19 of G.L. c. 268A prohibits a municipal employee from participating as such an employee in a particular matter in which to his knowledge an immediate family member has a financial interest.

10. The decisions to issue the septic system certificate of compliance and sign the occupancy permit on behalf of the Board of Health for 31 Red Pine Way were particular matters.¹

11. Longo participated² in the particular matters by deciding to issue the septic system certificate of compliance and by signing the occupancy permit as an employee of the health department.

12. Brett is Longo's brother and therefore an immediate family member.³

13. As owner of the property, Brett had a financial interest in having the septic system certificate of compliance and the occupancy permit issued because the property would be habitable, more marketable and therefore more valuable.

14. Longo knew of her brother's financial interests at the time she signed the septic system certificate of compliance and occupancy permit.

15. Accordingly, by signing the septic system certificate of compliance and the occupancy permit for 31 Red Pine Way, as set forth above, Longo participated in her official capacity in particular matters in which she knew an immediate family member had a financial interest, thereby violating G.L. c. 268A, §19 on each occasion.

Section 23(b)(2)

16. Section 23(b)(2) of G.L. c. 268A prohibits a municipal employee from knowingly or with reason to know using or attempting to use her position to obtain for herself or others an unwarranted privilege of substantial value which is not properly available to similarly situated individuals.

¹ "Particular matter" means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, §1(k).

² "Participate," participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, §1(j).

³ "Immediate family" means the employee and his spouse, and their parents, children, brothers and sisters.

17. Longo used her official position as health department secretary to access, sign and issue the septic system certificate of compliance and sign the occupancy permit for 31 Red Pine Way.

18. Brett's corporation did not comply with the originally approved plan in installing the new septic system at 31 Red Pine Way. Contrary to state regulations, no "as-built" was submitted to the Board of Health, no one approved by the Board of Health had conducted a site inspection and neither the installer nor the designer had signed the certificate. Therefore, Brett was not entitled to a certificate of compliance. In turn, because a valid certificate of compliance had not issued, Brett was not entitled to an occupancy permit. Thus, Longo's issuance of the certificate of compliance and signing of the occupancy permit under those circumstances was a use of her official position to secure for Brett unwarranted privileges which were not properly available to him.

19. Brett's obtaining the septic system certificate of compliance and occupancy permit were of substantial value because without the certificate and the permit the house would not be habitable and would be more difficult to sell. A municipality cannot issue an occupancy permit for a dwelling that does not have a certificate of compliance.

20. A certificate of compliance and occupancy permit would not have been available to other similarly situated companies or persons under such circumstances.

21. Thus, by misusing her official position as the health department secretary to improperly issue a septic system certificate of compliance and sign the occupancy permit for 31 Red Pine Way as described above, Longo violated G.L. c. 268A, §23(b)(2) on each occasion.

-Resolution-

In view of the foregoing violation of G.L. c. 268A by Longo, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Longo:

- (1) that Longo pay to the Commission the sum of \$5,000.00 as a civil penalty for violating G.L. c. 268A, §§19 and 23(b)(2); and
- (2) that Longo waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: February 5, 2003